

New disputes resolution rules in the energy sector

The Romanian Energy Regulatory Authority (“ANRE”) issued a new procedure applicable for the settlement by ANRE of the complaints filed by the existing or future final clients of electricity and gas, as well as by the existing and future grid users (both producers and consumers) against the providers of services and activities in the energy field (the “Provider”). The procedure was approved by ANRE Order no. 194 of October 28, 2020 which was published in the Official Gazette of Romania no. 1033 of November 5, 2020.

The new procedural rules are meant to complement the already existing procedures regulating the settlement of other types of disputes, such as the complaints against the transmission and distribution operators, the disputes occurred between participants on the wholesale and retail markets, disputes occurred in the execution of energy sector contracts, complaints regarding the grid access and those regarding the investigations conducted by ANRE.

The application for this dispute resolution procedure may be filed whenever:

- (i) the applicant deems that its legal right or legitimate interest was breached by the Provider through the issuance of a document or through a response received to its request;
- (ii) the Provider did not respond to the applicant’s request during the applicable legal timeline;
- (iii) the Provider unjustifiably refused to perform an operation necessary for preserving the applicant’s right or legitimate interest.

It is important to mention that the following complaints are excluded from this settlement process:

- (i) complaints having as object matters older than 36 months;
- (ii) complaints which were already submitted for settlement by the courts or for out of court settlement.

As a condition to benefit from this dispute resolution procedure, the applicant must first address the relevant Provider as a preliminary settlement process and must provide ANRE evidence in this respect by attaching to the complaint the response sent by the Provider or evidence that the legal deadline for such response expired (if absent the response).

In order to be taken into consideration, the complaint must follow specific requirements, as follows:

- (i) the complaint must contain at least the identification data of the applicant and of the Provider, the description of the subject matter and indication of the legal ground justifying the application;
- (ii) all documents must be drafted in Romanian or must be accompanied by a translation into Romanian certified by an authorized translator;
- (iii) the complaint must be sent to ANRE by post office, by delivery at ANRE’s registry office, by filling in the dedicated form available on ANRE’s website, by e-mail or fax.

The standard term for settling the request is of 30 days and may be extended with additional 30 days, subject to previously notifying the applicant, in case a more detailed research is needed.

The dispute parties may reach an amicable settlement at any time during the analysis of the complaint by ANRE. In such case, the applicant is not entitled to file a new complaint with the same object.

The procedure is part of a very intense regulating activity carried out by ANRE in view of adapting the secondary regulations to the recent changes of the Energy and Gas Law no. 123/2012 and to the European regulations.